

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Western District of New York

Case No.

22 CV 6145-CJS

(to be filled in by the Clerk's Office)

Eric Wellington

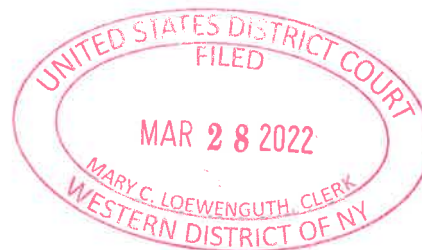
Plaintiff(s) Pro-se

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-
CO. TOMISAN; CO. BOWMAN; CO. OTTO; CO. CHORNEY; CO. SEWELL
John Doe; All being sued in individual and official capacity, John Doe Elmira Supt.

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

JURY TRIAL: Yes ☒ No ☐

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

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I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Eric Wellington
 All other names by which
 you have been known: _____
 ID Number 09A0622
 Current Institution Sing Sing C.F.
 Address 354 Hunter Street
Ossining City N.Y. State 10562 Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name C.O. Tomisan
 Job or Title (*if known*) Prison Guard
 Shield Number N/A
 Employer N.Y.S. DOCS
 Address Elmira C.F. P.O. Box 51
Elmira City N.Y. State 14902-0500 Zip Code

☐ Individual capacity ☐ Official capacity

Defendant No. 2

Name C.O. Bowman
 Job or Title (*if known*) Prison Guard
 Shield Number N/A
 Employer N.Y.S. DOCS
 Address Elmira C.F. P.O. Box 51
Elmira City N.Y. State 14902-0500 Zip Code

☒ Individual capacity ☒ Official capacity

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Defendant No. 3

Name

P.O. Chering

Job or Title (if known)

Prison Guard

Shield Number

N/A

Employer

N.Y.S. DOCS

Address

Elmira C.F. P.O. Box 51

Elmira

City

N.Y.

State

14902-0500

Zip Code



Individual capacity



Official capacity

Defendant No. 4

Name

C.O. Sewall

Job or Title (if known)

Prison Guard

Shield Number

N/A

Employer

N.Y.S. DOCS

Address

Elmira C.F. P.O. Box 51

Elmira

City

N.Y.

N.Y.

State

14902-0500

Zip Code



Individual capacity



Official capacity

See Attach

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

1st Amend. Const. Right, 8th, 14th Const. Right, also, Due process right, under colors of law, state and federal law.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

Defendant No. 5

NAME: Sgt. John Doe

Job or Title: Sergeant

Shield Number: N/A

Employer: N.Y.S. D.O.C.C.S. / Elmira C.F.

Address: Elmira, C.F. P.O. Box 51

Elmira, N.Y. 14902-0500

☒ Individual capacity ☒ Official capacity

Defendant No. 6

NAME: John Doe

Job or Title: Superintendent

Shield # N/A

Employer: N.Y.S. DOCCS

Address: Elmira, C.F. P.O. Box 51

Elmira, N.Y. 14902-500

Defendant No. 7

NAME: Anthony Annucci

Job Title: Acting Commissioner

Shield No. N/A

Employer: N.Y.S. DOCCS

Address: Albany, N.Y. 12221

☒ Individual capacity ☒ Official capacity

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- D.** Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A.** If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B.** If the events giving rise to your claim arose in an institution, describe where and when they arose.

Incident occurred at Elmira C.F. on October 7, 2019, approx 8:15 in the mess hall

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C. What date and approximate time did the events giving rise to your claim(s) occur?

October 4, 2019, at 8:18 AM

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what?

Was anyone else involved? Who else saw what happened?) On October 4, 2019, a CO walked beside me, put a hand on my shoulder, and requested that I turn around and put my legs under the table, I did so, but asked the CO if he couldn't see that I was sitting in the chair with someone else and didn't have to touch me. A second CO then leaned across the table and called me a racial slur, and said "you do what the fuck we tell you to do." I responded "yes Sir." At that point, a Correctional Sergeant arrived at the table and directed me out of the mess hall. As I stood up as directed and put my hands behind my back at that time, I felt a hand on my back and neck and arms, I was thrown to the ground where I struck my head. Then a CO placed a knee on my lower back which caused a popping sound and excruciating pain. (See attached pg. 11)

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I'd sustain a fracture back, Broken nose, and staples to the right side on my head. I'm still awaiting to received physical therapy!!

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Request to be compensated due to staff harsh and excessive misuse of force, misused and abuse of authority and power. liable damages, mental anguish pain and suffering, I am requesting for 1.2 million dollars.

However, while I was laying on the floor, I was struck several times in the face. I was then dragged out of the mess hall and slammed against a wall. The action taken against me was intentional and unwarranted in which I'd suffered a laceration to the head, a broken nose, and a fracture back. However, to this day I am not receiving proper medical attention.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

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- D.** Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E.** If you did file a grievance:

1. Where did you file the grievance?

Elmira corr. facility

2. What did you claim in your grievance?

that I was assaulted by CO's.

3. What was the result, if any?

N/A containing the incident

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I appeal to the superintendent and albeny.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

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IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

ERIC WELLINGTON #020

09A0622

SING SING CORR. FACILITY, 354 HUNTER STREET

OSSINING

City

N.Y.

State

10562

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address